IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 96 OF 1998

1. State of Goa,
   represented by Special
   Land Acquisition Officer,
   (South), I.D. Complex,
   Gogol, Margao, Goa.

2. Executive Engineer,
   Works Division XIII,
   Irrigation Department,
   Gogol,Margao, Goa. ... Appellants.

VERSUS

Shri Pedro Fernandes,
House No. 183,
Sarvodem, Navelim,
Salcete, Goa. ... Respondent.

Shri H.R. Bharne, Government Advocate for the Appellants.

None for Respondents.

CORAM: N.A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 1.04.2004
DATE OF PRONOUNCING THE JUDGMENT:12.04.2004

J U D G M E N T:

The State of Goa through its Special L.A.O. and Executive Engineer, Works Division XIII, Irrigation Department, Margao has preferred this appeal against the Judgment/Award of the learned Addl. District Judge, Margao (Reference Court) dated 21.8.1998.

2. The respondent was the owner of the land surveyed under No.9/4 of Avadem village in Quepem Taluka admeasuring 1705 sq.mtrs., having purchased the same

somewhere in the year 1970. By virtue of Notification issued under Section 4(1) of the Land Acquisition Act 1894 and published in Gazette dated 21.3.86 the Government acquired 300 sq.m. of the suit land for the purpose of construction of water courses in the Command Area of D-1 and its Cotombi Branch Part II Salaulim Irrigation Project in villages of Cotombi and Avedem in Quepem Taluka and the L.A.O. by Award dated 31.8.1988 awarded compensation at the rate of Rs.5/- per sq.m. towards the land and Rs.12,032/- towards the trees. The learned Reference Court has proceeded on the basis that the respondent was awarded compensation at the rate of Rs.45/- per sq.m.

3. Dissatisfied with the Award of the L.A.O. the respondent sought reference to be made and the Reference Court has now enhanced the compensation payable to the respondent by another Rs.25/- per sq.m.

4. The respondent had examined himself (AW.1) and had produced two sale deeds, one dated 23.4.85 at Exh.AW.1/A by which a plot of land admeasuring 1278.17 sq/mts. was sold at the rate of Rs.35/- per sq.m. and the other dated 3.9.85 at Exh.AW1/B by which a plot of land of 725 sq.mts. was sold at the rate of Rs.62/- per sq.m. The Respondent had examined an agricultural expert namely AW.2 Jose Rebello, and in support of the

first sale deed, the respondent had examined AW.4 Gajanan Naik who was merely an attesting witness and in support of the second sale deed the respondent had examined the attorney of the sellers namely AW.3 Advocate Shri Tovar Dias.

5. The learned Reference Court did not place any reliance on the evidence of AW.2 Jose Rebello as he had inspected the property only on 10.5.92 after a gap of six years from the date of Notification under Section 4 of the Act as it would serve no purpose. The learned Reference Court also discarded the Sale Deed dated 23.4.85 (Exh.AW.1/A) observing that there was no evidence on record to say that the said plot of the sale deed was similar in nature to the acquired property. The learned Reference Court then placed reliance on the second sale deed dated 3.9.85 at Exh.AW.1/B and observing that the land of the said sale deed was generally sold as agricultural land and as it was similar to the acquired property accepted the price paid for it and as there was a gap of six years from the date of notification allowed an increase of 10% and again considering an increase of Rs.5/- per sq.m. on account of severance charges fixed the market value payable to the respondent at Rs.70/- per sq.m.

6. The respondent has chosen to remain absent at

the hearing of arguments. Arguments have been heard from learned Government Advocate Shri Bharne whose first grievance is that the learned Reference Court could not have given any severance charges to the respondent because there was no issue framed on that aspect nor was there any evidence in support of the same. I am of the opinion that the learned Govt. Advocate Shri Bharne is fully justified in making the said submission. As already stated the property of the respondent had an area of about 1705 sq.mts. out of which a strip of about 49 x 6 m. as stated by AW.1 was acquired. No doubt that AW.1 Pedro (respondent) stated that due to the acquisition he was finding difficulty to construct a house in the remaining portion. However, the bare statement of AW.1 Pedro could not have been accepted by the learned Reference Court in the absence of any plan or further evidence having been produced by AW.1 Pedro. There was absolutely no evidence before the learned Reference Court to conclude that by the acquisition of the said 300 sq.m. the remaining land of the applicant was rendered useless or had diminished its value or utility. There was not even a whisper from which portion of his land the portion of 300 metres was acquired and being so, there was absolutely no scope for the learned Reference Court to have concluded that by the present acquisition the value or utility of the land of the respondent was reduced. The learned Reference

Court therefore was not justified in awarding an increase of Rs.5/- per sq.m. to the respondent on account of severance of the said 300 sq.mts. of the land of the respondent.

7. The second submission of learned Government Advocate Shri Bharne is that no deductions were made for the purpose of arriving at the market value of the acquired land of the respondent. However what needs to be considered in this case is whether there was any evidence at all that the property of the sale deed dated 3.9.85 was similar to the acquired property of the respondent. It is to be noted that with the catena of decisions of the Hon"ble Supreme Court (see **Special Deputy Collector and another v. Kurra Sambasiva Rao and others,** reported in A.I.R. 1997 S.C., 2625). The Hon'ble Supreme Court has held that the burden of proof that the amount awarded by the L.A.O./ Collector is not adequate is always on the claimant. The burden is to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the L.A.O./Collector or that the L.A.O./Collector proceeded on a wrong premise or applied a wrong principle of law. Such evidence produced by the claimant has got to be otherwise cogent and reliable.

8. No doubt the respondent did produce the said two sale deeds, but the evidence regarding comparison was absolutely lacking. The Hon'ble Supreme Court in the case of **Shaji Kuriakose and another v. Indian Oil Corpn. Ltd. and others** reported in (2001) 7 S.C.C., 650 has stated that: " Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act and that there are certain factors which are required to be fulfilled and on fulfilment of those factors, the compensation can be awarded according to the value of the land reflected in the sales, the factors, being inter alia (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired and if all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land (emphasis supplied) ".

9. As far as the respondent (AW.1 Pedro) was concerned, he stated that he had seen the properties which were the subject matter of the two sale deeds but he could not say anything about their length or their width although he admitted that there were mango trees, jackfruit trees and coconut trees in the said properties of the said sale deeds. He was not aware whether the value of those trees was included while fixing the price of the land sold. The evidence of AW.1 Pedro shows that he was not at all conversant either with the plots of the said two sale deeds or the sale deeds themselves. As far as AW.3 Advocate Shri Tovar Dias was concerned, he too did not have much idea of the property sold by him as attorney by sale deed dated 3.9.85 and he had no knowledge whatsoever regarding the respondent's acquired property. He also did not know what was the total area of the property sold by him as attorney of the sellers. He had conceded that he had not seen the respondent's property and as such he did not know anything about the same. Regarding AW.4 Gajanan Naik, he was only a attesting witness and he had frankly admitted that he had not seen the property of sale deed dated 23.4.85 nor he had seen the acquired property of the respondent. In such a situation, I do not know on what basis the learned Reference Court could have come to the conclusion that the property of the sale deed dated 3.9.85 was similar to the land of the respondent, part

of which was acquired. The sale deed dated 3.9.85 (Exh.AW.1/B) shows that a house existing therein admeasuring about 25 sq.m. belonging to one Rosada Costa was excluded from the purview of the said sale deed. However, the evidence of AW.3 Advocate Tovar Dias shows that the said property was sold to Caetano Mendes who had residential house in the said property. AW.3 Tovar Dias has not spoken anything about the exclusion of the said house of 25 sq.m. In the light of the said discrepancies, in my opinion the learned Reference Court could not have used the said sale deed dated 3.9.85 as a guide for fixing the market value of the acquired land of the respondent more so because there was no evidence of comparison led on behalf of the respondent that the land of the said sale deed dated 3.9.85 was otherwise comparable or similar to the acquired land of the respondent.

10. In view of the above, the appeal deserves to succeed and the Judgment and Award of the learned Reference Court deserves to be set aside. Considering the facts, there will be no order as to costs.

N. A. BRITTO, J.

sl.